

local exchange service providers in the area of payphone services. The FCC provided guidelines for state commissions in the conduct of investigations under §276 of the FTA. The FCC recommends the conduct of investigations by state commissions in the following area:

1. Whether LECs subsidize their payphone operation with revenue from noncompetitive, ratebase services i.e. business and residential service.
2. Whether LECs provide cost-based rates in local exchange services pursuant to the New Services Test.
3. Whether the quality of the local exchange service permits IPPs to compete on an equal basis with the payphones owned by the LECs.

The Commission in MPSC Case Nos. U-11280 and U-11281, dated July 14, 1997 and February 25, 1998 approved Ameritech's and GTE's TSLRIC, the cost study methodology and proposed rates for unbundled network elements and resale services as modified by the orders. The Commission in MPSC Case No. U-11280, supra, ordered numerous modifications in Ameritech's cost study including inputs for depreciation, cost of capital, fill factors and certain non-volume sensitive costs. The Commission ordered certain changes in the manner in which Ameritech structured its tariff rates and conditions under which unbundled elements and service would be made available including nonrecurring charges, unbundling local switching, inter-office transport and collocation. The Commission further approved resale discounts of 25.96% and 19.96%

for operator or non-operator services.

The Commission in MPSC Case No. U-11281, supra, ordered numerous modifications to GTE's methodology in calculating its TSLRIC significantly in the area of inputs for fill factors and the shared and common costs allocations. In the area of Rate Structure Issues, the Commission ordered GTE to modify its nonrecurring charges, nonbypassable, competitively neutral surcharge and offer combinations or platforms. In the resale services area, the Commission further ordered modifications in GTE's avoided cost study, resale pricing and services subject to resale.

#### Burden of Proof

The ALJ finds that the FCC clearly places the burden of proof on Ameritech and GTE to show that the service elements in the payphone tariff are cost-based and do not recover more than a reasonable portion of the overhead costs in compliance with the New Services Test. 47 C.F.R. §61.49. The FCC states that each tariff filing in compliance with the New Services Test must include cost data sufficient to show the recovery is not more than a reasonable portion of the carriers overhead. 47 C.F.R. §61.49(g)(2); FCC Order CC Docket No. 93-129, dated October 28, 1996.

The ALJ finds that the MPTA has the burden of proof as to all other issues constituting the basis of its complaint. MPSC Rule 515. The ALJ also notes that Rule 515 contains provisions which permit the shift of the burden of proof as required by law.

MPSC Case No. U-11410

On May 20, 1997, the MPTA filed a petition requesting the Commission to investigate the tariff filings of Ameritech and GTE which were to have complied with the New Service Test. The Commission order denied the MPTA's request on the basis that there was insufficient showing of a reason for such an investigation. However, the Commission acknowledged its responsibility to review the local exchange company's (LEC) tariff for compliance with applicable law. The Commission further ordered the release of the cost studies and supporting data submitted in MPSC Case Nos. U-11280 and U-11281, supra, provided the MPTA signify its commitment to comply with the protective order and not disclose the protected information to its operating members.

III.

DISCUSSION

Payphone Industry Background

Since 1985 pursuant to an FCC order, Ameritech and GTE have made available payphone service to IPPs. The MPTA members or IPPs purchase access and other services from Ameritech and GTE then resell the service to end-users. The IPPs purchase a single local exchange access line and a pay telephone, typically a unit referred to as a smart set, that attaches to the end of the line. The IPPs then sells local exchange service

and interexchange telephone service to end-users that place coins into the payphone. The smart set is a pay telephone attached to the access line which functions as a computer with the ability to rate calls, answer detection, error messaging and coin return functions right at the phone. In 1996, the FCC ordered LECs to provide both an IPP line and IPP coin line. The IPP coin line permits the use of a unit referred to as a dumb set. The dumb set is a pay phone that relies on central-office switching functions to handle call routing, call rating, answer detection, etc. and costs approximately one-third of the amount of a smart set.

IPPs purchase either smart sets or dumb sets from switch vendors i.e. Nortel, Siemens and Lucent. The features of the smart set such as quality, functionality and price are provided by the switch vendors. Ameritech and GTE have no responsibility regarding the MPTA and switch vendor relationship.

IPPs compete directly with Ameritech and GTE in the payphone industry for locations and end-users. The market share of the IPPs has increased over the years. IPPs now control more than one-fifth of the market.

#### New Services Test

The MPTA argues that the Commission should use the Ameritech and GTE TSLRIC, cost studies, methodology and overhead allocation factors already approved by the Commission in MPSC Case Nos. U-11280 and U-11281, supra. The MPTA argues that Ameritech and GTE tariff filings in May 1997 violate the New Services Test

primarily because they are not consistent with the Commission Orders in MPSC Case Nos. U-11280 and U-11281, supra.

The MPTA argues that the FCC has adopted the New Services Test as an objective pricing standard because it recognizes that LECs have an incentive and ability to charge its payphone competitors excessive rates for network services. FCC Report and Order CC Docket 96-128, 96-388 dated September 20, 1996. The MPTA argues that the FCC reiterated the pricing standard as the New Services Test. FCC Order on Reconsideration, 96-439 dated November 8, 1996. The MPTA argues that the FCC adopted the New Services Test as the method to determine the price floor and price ceiling. 47 C.F.R. §61.49.

The MPTA argues that the Commission has three fundamental issues to resolve in this proceeding:

1. Should the Commission adopt a TSLRIC or other standard different than already approved in MPSC Case Nos. U-11280 and U-11281, supra.
2. Should the Commission adopt an overhead allocation methodology different than already approved in MPSC Case Nos. U-11280 and U-11281, supra.
3. Should the LECs End-User Common Line Charge revenue be deducted from the rate.

The MPTA argues that the Commission approved the TSLRIC for Ameritech and CTE after extensive investigation and determination of the appropriate cost of capital.

fill factors, depreciable asset lives and land and building costs. The MPTA argues that the Commission also identified the appropriate overhead allocation percentages for Ameritech and GTE. The MPTA argues that it would be inappropriate to disregard the prior TSLRIC investigation and the overhead percentage allocations.

The MPTA argues that Ameritech's rates do not comply with the New Services Test. The MPTA argues that Ameritech has failed to provide sufficient workpapers or cost support or any other information from which the Commission could conclude that the filing complies with the New Services Test. The MPTA argues that, to the contrary, Ameritech admits that the cost studies it relied on have been rejected by the Commission in MPSC Case No. U-11280, supra.

The MPTA requests that the Commission adopt the payphone service tariffs it submits. The MPTA further requests that the Commission order an effective date for its proposed tariffs of April 15, 1997. The MPTA argues that the rates it proposes apply the Commission-adjudicated TSLRIC assumptions, values and methodologies as well as the Commission adjudicated overhead allocations from Case No. U-11280, supra.

MCI argues that since April 15, 1997, Ameritech was required under the FCC to offer competitive payphone services which are not subsidized from noncompetitive ratepayers. MCI argues that Ameritech has presented no evidence to show that its payphone operations contain no subsidies.

Ameritech argues that it has submitted cost data supporting its rates for payphone

service which show that it does not recover more than a reasonable portion of overhead costs. Ameritech argues that the data filed along with its tariffs show that the ratio of rates to costs for payphone service fall well below ratios previously approved by the FCC as reasonable overhead.

Ameritech argues that its payphone rates are the direct result of long-standing Commission approved rates. Ameritech argues that its tariff filing complies with the requirements of the New Services Test. Exhibit R-37. Ameritech argues that it has been offering service subject to the New Services Test prior to the FCC's promulgation of the nonstructural safeguards. Ameritech argues that it performed calculations based on the definition described in 47 C.F.R. §61.49; the parameters of the FCC's Payphone Order and Reconsideration Order; the Commission approved TSLRIC as well as Ameritech's established practices for New Services Test filings.

Ameritech argues that the MPTA has placed no evidence in the record to show that Ameritech's rates are in any way unreasonable. Ameritech rejects MPTA's proposed tariffs as a flawed alternative methodology.

Ameritech argues that the overhead loadings approved by the FCC represent a broad range. Ameritech argues that while the FCC has never expressly qualified what it believes to be "reasonable" overhead loadings, it has approved 3.4 times direct costs and implicitly approved as high as 4.8 times direct costs. In the matter of Local Exchange Carriers' Payphone Functions and Features, CC Docket No. 97-140 FCC

97-392. Ameritech argues that the FCC has even approved 74.95 times direct costs with respect to certain payphone features greatly exceeding any overloading embodied in Ameritech's rate for services provided to IPPs. US West Transmittal, No. 823, Tariff F.C.C. No. 5, April 15, 1997.

Ameritech argues that the rates it charges IPPs reflect long-standing approved rates. Ameritech argues that the IPP line is identical, in terms of technical function to its basic single business line. Ameritech argues that the rate for an IPP line is based on and has maintained a consistent relationship to the rate approved by the Commission for the IPP Line/business line. Ameritech argues that it makes no sense for the Commission to alter rates that are directly linked to previously approved rates and that have been scrutinized by the Commission and found to be reasonable.

Ameritech argues that since its compliance filing in May 1997 the rates have remained in effect and the Commission has made no finding that the rates are unreasonable. Ameritech argues that, in fact, the Commission rejected an earlier request by the MPTA to investigate whether the rates complied with the New Services Test. MPSC Case No. U-11140, supra.

Ameritech argues that the MPTA is requesting that the Commission lower rates to the IPPs and ignore the effect of the loss revenue on other services which in some cases are identical or functionally equivalent to the services purchased by IPPs. Ameritech argues that this single-issue ratemaking approach proffered by MPTA should



be rejected because of three reasons:

1. It ignores objectives embedded in current rate design.
2. Pricing policy embedded in current rates, including appropriate overhead allocation, would be reversed without a showing of sufficient cause.
3. Economic harm results because investor faith is undermined as a result of an inefficient and unpredictable business and regulatory environment causing increased cost of capital and reduced long term investment.

William E. Taylor testified on behalf of Ameritech. Mr. Taylor testified that the FCC does not require a forward looking cost standard apply to the New Services Test. 10 Tr. 903. Mr. Taylor testified that Ameritech's rates for network services was based on business line, which rate was set last in a general rate case. Mr. Taylor acknowledges that the policy at the time of the general rate structure case recognized the need to recover historical costs. 10 Tr. 965.

Michael Didominicis testified on behalf of Ameritech. Mr. Didominicis admitted that Ameritech's rates in question were not arrived at by methodology consistent with the Commission Order in MPSC Case No. U-11280, supra. Mr. Didominicis further testified that the overhead allocations were not consistent with the overhead allocations assigned through the methodologies approved in MPSC Case No. U-11280, supra. Mr. Didominicis testified that the TSLRIC studies used in Ameritech's January 1997 filing in MPSC Case No. U-11280, supra, was the basis for its New Services Test.

Michael B. Suthers testified on behalf of Ameritech. Mr. Suthers testified that the rates have already been in place and in some cases approved by the Commission for many years. Mr. Suthers testified that although he was not proposing a different methodology the Commission is not limited to accepting the methodology proposed by the MPTA.

Gary Pace testified on behalf of the MPTA. Mr. Pace identified the Ameritech and GTE tariff charges. Mr. Pace prepared a spreadsheet to compare the average monthly bills for Ameritech and GTE with the rates as proposed by Mr. Starkey. Mr. Pace found Ameritech and GTE proposed rates higher than those proposed by Mr. Starkey. Mr. Pace acknowledged that Ameritech and GTE charge its own payphone divisions through cost allocation. However, Mr. Pace testified that all it does is to drive up the price for all payphones.

Michael Starkey testified on behalf of the MPTA. Mr. Starkey calculated Ameritech's overhead allocations ranges of 155.56% to 249.31%. Further, Mr. Starkey calculated the following overhead allocations percentages:

<u>Service</u>	<u>Overhead Allocation</u>
Local Usage	633.9%
Answer Supervision	253%
Call Screening	935%

Mr. Starkey calculated the overhead allocation percentages of Ameritech's IPP

coin line from 182% to 249%. He figured the overhead allocation factor for the COCOT Service from 171% to 238%.

Mr. Starkey testified that he is extensively familiar with Ameritech's total service long-run incremental costs from involvement and review in numerous Ameritech proceedings where Ameritech's cost information was at issue. He testified that based on the Commission's order in MPSC Case No. U-11280, supra, he arrived at reasonable forward looking incremental costs for Ameritech's payphone service. 10 Tr. 812. Mr. Starkey testified that even though there was no direct cost information received from Ameritech he believes his analysis is reasonable.

Mr. Starkey testified that he was not able to recalculate GTE's tariff. He testified that GTE's paystation cost study could not be reconciled with GTE's compliance studies from MPSC Case No U-11281, supra. He testified that he was unable to establish GTE's TSLRIC associated with its paystation access line. However, Mr. Starkey testified that given GTE's TSLRIC for its paystation access line that figure could be substitute in his equation and then the access line rate would comply with the New Services Test. 10 Tr. 845.

Peter Gose testified on behalf of the MPTA. Mr. Gose created a Payphone Subsidy Calculation Model (PSCM) to show whether the payphone operations of Ameritech and GTE were free of subsidies. Mr. Gose found that there was insufficient information available to determine whether Ameritech had removed all subsidizes from

its payphone operations. Mr. Gose concluded that the information must be forthcoming from Ameritech for a meaningful analysis.

Melvin Sands testified on behalf of MCI. Mr. Sands testified that Ameritech has failed to show that its retail payphone business is free of subsidies. Mr. Sands includes the intrastate switched access rates as a source of subsidy.

Ameritech does not dispute Mr. Starkey's calculations of overhead allocation factors but argues that such overhead allocation factors are reasonable considering FCC cases which have approved higher overhead factors. Ameritech argues that the FCC has approved overhead factors significantly higher. In the Matter of Local Exchange Carriers' Payphone Functions and Features, CC Docket No.97-140, FCC 97-392 and US West Transmittal No. 823, Tariff F.C.C. No. 5, April 15, 1997.

The MPTA argues that GTE fails the New Services Test as well. The MPTA argues that GTE employed a methodology already rejected by the Commission in MPSC Case No. U-11165, supra. The MPTA argues that GTE failed to deduct the End-User Common Line (EUCL) Charge as well as usage charges. The MPTA argues that the inclusion of the EUCL Charge and the usage charge grossly enhance the overhead. The MPTA also argues that GTE applied different assumptions between its coin line cost for its own payphone operation and the COCOT service which results in an anti-competitive effect.

The MPTA argues that GTE recovers significantly more overhead than actually

reported to the Commission in its compliance filing. The MPTA argues that GTE recovers overhead from IPPs of 199% while at the same time recovering overhead from its own payphone division of 149%. The MPTA argues that both overhead allocations far exceed the 17.08% overhead allocation of GTE approved in MPSC Case No. U-11281, supra. The MPTA argues that the overhead allocation of 42.9% is based on GTE's FCC access prices which GTE applied to its compliance filing rather than the more appropriate 17.08% Commission approved overhead allocation.

MCI argues that GTE's cost study contains several discrepancies and inconsistencies which suggest that GTE's payphone operations are subsidized by other exchange or exchange access services. MCI agrees with the MPTA that the GTE cost studies have already been rejected by the Commission and therefore are not in compliance with the New Services Test.

AT&T also argues that GTE used the same cost studies rejected by the Commission in MPSC Case No. U-11165, supra. AT&T argues that GTE should have filed the cost study in compliance with the Commission order in MPSC U-11281, supra. AT&T argues that GTE's attempt to present the same cost study rejected in MPSC Case No. U-11165, is a flagrant disregard of a valid and lawful Commission Order.

GTE argues that under the FCC different methodologies are equally appropriate. Re Price Cap Performance Review for Local Exchange Carriers: FCC 95-393, CC No. 93-197 (Second Further NOPR, September 20, 1995) ¶41. GTE argues that the MPTA

witness Mr. Starkey has a serious credibility issue. GTE argues that its cost study was performed by setting a floor price at the direct costs of the service plus 42.9% fully allocated overheads to the service. GTE argues that its direct costs were established on a forward-looking TSLRIC basis. GTE argues that the FCC has repeatedly accepted its tariff filings as in compliance with the New Services Test.

GTE argues that the FCC has not set any particular allocation percentage of overheads for payphone services nor has the Commission. GTE recommends rejection of the MPTA proposed overhead allocations.

GTE presented the testimony of Eugene W. Mauk. Mr. Mauk testified that the proposed rates are cost-based, meet the New Service Test, are reasonable and nondiscriminatory and comply with state and federal law. Mr. Mauk testified that GTE accomplished the cost study by setting a floor price at the direct costs for the service. A ceiling was set by adding fully allocated annual charge factors consistent with prior FCC filings. Mr. Mauk testified that once a floor and ceiling were established a statewide composite average tariff rate was computed using the COCOT line rate and the EUCL Charge and COPT coin line and the EUCL Charges. Mr. Mauk testified that no rates were below or above the floor or the ceiling and no adjustments were necessary.

Mr. Mauk admits that GTE's cost study for IPP service were based on the cost studies for the GTE/ATT arbitration proceeding, MPSC Case No. U-11165, supra, and MPSC Case No. U-11281, supra. 10 Tr. 1046. Mr. Mauk admits that the common cost

analysis used for GTE's cost study is the same as presented and rejected in MPSC Case No. U-11165, supra, and presented and modified in MPSC Case No. U-11281, supra. 12 Tr. 1455. Mr. Mauk testified that GTE's methodology for determining the overhead allocation percentage took the TSLRIC and compared it to the tariff price and where the tariff price was greater then they went back to determine the percent above TSLRIC. 12 Tr. 1438-1440. Mr. Mauk admits that the fill factors used in its calculation of the New Services Test were the same fill factors found by the Commission to understate the level of fill. 12 Tr. 1456. Mr. Mauk also testified that GTE has appealed the Commission's order and believes that the matter is under dispute.

The ALJ finds that the New Services Test requires that rates be set at the sum of the direct cost of the service plus a reasonable portion of the overhead costs. The FCC does not prescribe a methodology for application to arrive at the rates under the provisions of the New Services Test. Rather the parameters are purposely broad permitting a variety of applications. In addition, the FCC did not mandate what it considers reasonable overhead loadings.

The ALJ agrees with the MPTA's analysis regarding the Commission established TSLRIC and overhead allocation factors and their application to this case. The ALJ believes that Ameritech and GTE only needed to make the modifications as ordered by the Commission in MPSC Case No. U-11280 and U-11281, supra, and use the overhead allocations which the Commission determined were reasonable to have complied with

the requirements of the New Services Test. However, Ameritech and GTE chose to present their own methodology and overhead factors.

The ALJ finds that the Commission has specifically identified appropriate methodology to calculate the TSLRIC of Ameritech and GTE under the provisions of the MTA in MPSC Case Nos. U-11280 and U-11281, supra. The Commission identified four major cost inputs and approved a methodology for allocating common costs. Ameritech and GTE have shown no reason to deviate from the finding of the Commission. The ALJ rejects Ameritech's argument that it updated its TSLRIC cost studies using cost inputs established in MPSC Case No. U-11280, supra. The evidence is to the contrary. Ameritech admits that its cost study was based on the rates for business line and including embedded costs.

The ALJ rejects Ameritech's tariff. Ameritech's methodology did not conform to the methodology approved by the Commission. Instead, Ameritech has submitted a tariff based on business line and a methodology specifically rejected by the Commission. The adoption now of a tariff based on Ameritech's methodology is not warranted. Ameritech has not shown sufficient reason that warrants a deviation of the Commission approved methodology.

The ALJ rejects Ameritech's argument that the MPTA proposes single-issue ratemaking and the three reasons cited in support of its argument. Ameritech is correct that embedded in rates it has filed in its tariff are objectives and pricing policy.



However, objectives and pricing policy must be revised to remain consistent with statutory mandates of the FTA and the MTA. The embedded costs are inconsistent with TSLRIC. Ameritech and GTE must conform their payphone operations to comply with the provisions of the FTA and the MTA regarding payphone service offerings. The provisions of the FTA and MTA regarding payphone rates do not except compliance due to prior established objectives and pricing policies, in fact, the FCC ordered compliance with the New Services Test despite prior established objectives and pricing policies.

The ALJ finds that GTE has not shown that it complied with the New Services Test. In fact, GTE has shown that it used portions of cost studies already rejected by the Commission. The fact that GTE has appealed the Commission's order and believe that it is a matter of dispute does not change the fact that the cost study is based on previously rejected methodologies and cost factors. The ALJ finds that GTE did not use appropriate TSLRIC methodology nor that it includes reasonable overhead allocation factors. The ALJ agrees with the MPTA that the Michigan specific overhead allocation factor of 17.08% is more appropriate than the FCC assess price overhead of 42.9%. The ALJ recommends that the Commission order GTE to comply with the New Services Test.

The ALJ recommends that the Commission approve of the MPTA's proposed tariff for Ameritech. The ALJ finds that although the proposed tariff is not precisely accurate because the MPTA lack sufficient information, its methodology more closely resembles that of the New Services Test than does Ameritech. The ALJ recommends that the

Commission approved of the MPTA's proposed tariff for GTE. The ALJ finds that although a proposed tariff is not placed in the record the MPTA's methodology is more consistent with the standards of the New Services Test. The ALJ recommends the interim tariff proposed by the MPTA for GTE until revised cost studies are submitted by GTE. The ALJ recommends immediate implementation of MPTA's proposed tariffs. The ALJ further recommends the MPTA's proposed and interim tariff remain in effect until Ameritech and GTE submit tariffs consist with the New Services Test.

NonStructural Safeguards Apply Only to Regional Bell Operating Companies and Not GTE

GTE argues that §318 of the MTA does not impose upon GTE the nonstructural safeguards established by the FCC for Regional Bell Operating Companies (RBOC). GTE argues that the intent of §318 is to give the Commission statutory power and authority to enforce orders of the FCC. GTE argues that §318 predates both the FTA and the FCC's orders imposing nonstructural safeguards on RBOC with respect to payphone service. GTE argues that the FCC cannot convey jurisdiction to state commissions and absent §318(2) the Commission would be powerless to act. GTE argues that the FCC declined to impose the nonstructural safeguards on non-RBOC LECs. FCC Report and Order, supra ¶201.

GTE argues that while it is generally subject to Computer III and ONA requirements, the FCC declined to impose those requirements on GTE's payphone

operation. FCC Order CC Docket No. 92-256, supra. GTE argues that the FCC does not pre-empt the states to adopt nonstructural safeguards provided those safeguards are no more stringent than those imposed on the RBOC.

The MPTA argues that the FCC did require GTE to identify all accounts maintained by the LEC under their cost allocation manual. FCC Order on Reconsideration, supra ¶163. The MPTA maintains that this is to ensure that the payphone operation include all expense incurred by the LEC's own payphone operations.

Section 318 of the MTA states:

"(2) A provider of payphone service shall comply with all nonstructural safeguards adopted by the Federal Communications Commission for payphone service."

The ALJ rejects GTE's argument. The fact that the FCC did not impose the nonstructural safeguards on GTE payphone operations does not prohibit the legislature from doing so. In fact, the FCC clearly indicates that the states are not pre-empted from imposing nonstructural safeguards on non RBOC provided such safeguards are no more stringent than those imposed on RBOC. The legislature set the jurisdiction and authority over which the nonstructural safeguards apply. That legislation includes all providers of payphone service. The ALJ finds that it is clear that §318(2) subjects GTE to the nonstructural safeguards for payphone operations.

End-User Common Line (EUCL) Charge

The MPTA argues that the EUCL should be deducted to avoid a double recovery. The MPTA argues that the price of the network already recovers the entire cost of the loop facility. The MPTA argues that a failure to deduct the EUCL greatly diminishes the significance of the New Services Test. The MPTA argues that there is precedent for the deduction of the EUCL. West Virginia Public Service Commission Case No. 97-0643-T-T, dated May 22, 1998. The West Virginia Commission found that the payphone cost study in question included both interstate and intrastate costs. It concluded that it is appropriate to deduct the EUCL. The West Virginia Commission found it a double recovery of interstate line costs and ordered a reduction of the rate by the amount recovered from the FCC.

Ameritech argues that assessing the EUCL does not result in a double recovery, rather it is in compliance with the FCC. Ameritech argues that the MPTA is in error associating the EUCL and those costs that comprise the incremental costs for payphone service. Ameritech argues that the EUCL is a component of the interstate access rate with no relationship to intrastate local service rates. FCC Order in CC Docket No. 96-98, dated August 8, 1996 ¶ 984. Ameritech argues that there is precedent for its position. Public Utilities Commission of the State of Colorado, Docket No. 98F-146T dated November 20, 1998. Ameritech argues that the ALJ in Colorado recommended that the EUCL need not be deducted to prevent a double recovery.

Mr. Starkey testified that the EUCL is a federally prescribed charge which recovers

25% of the LEC's outside line. 10 Tr. 804. Mr. Starkey states that the EUCL recovers expenses associated with the non-traffic sensitive components of the local loop. He testified that the rate is set to generate historic embedded federally separated revenue requirements.

The ALJ finds that the TSLRIC includes all costs including interstate and intrastate costs. The ALJ agrees with the MPTA that the EUCL represents a double recovery. The TSLRIC is designed to recover all costs whether interstate or intrastate. The historic or embedded costs of the EUCL Charge should be deducted from the rate to prevent a double recovery.

#### Imputation Test

The MPTA argues that §362 of the MTA requires Ameritech and GTE to pass an imputation test. The MPTA argues that the imputation test serves two purposes. One it ensures that payphone operations of Ameritech and GTE are not subsidized. Two, it protects competitors from anti-competitive conduct. The MPTA argues that §362(1)(b) when read along with §362(1)(c) requires that the provider local exchange service in question be competitively available in order to exclude Ameritech and GTE from passing an imputation test.

MCI supports the MPTA and adds that the provider referenced in §362(1)(b) should be a facilities-based provider. MCI argues that without a facilities-based provider

both Ameritech and GTE use the same non-competitive services or their functionally equivalent to compete with IPPS that are dependent on Ameritech and GTE for underlying services. MCI sponsored Exhibit I-16 which it argues supports its claim.

AT&T argues that §362 is designed as a safeguard to prevent a LEC from abusing its monopoly position in competition with IPPs. AT&T argues that it is therefore important to determine whether Ameritech and GTE are in a position to abuse its status. AT&T urges rejection of Ameritech's argument that if there is one access line from a provider available in the relevant area then an imputation test is not required. AT&T argues that the mere introduction of filed tariffs to support Ameritech's claim of the availability of a provider is insufficient. AT&T points out that the tariffs introduced clearly provide that payphone network services are available only where facilities are available. Ameritech and GTE argue that they are not legally required to pass an imputation test. Ameritech and GTE invoke §362(1)(b) which they claim excludes them because network services are available from another provider. Ameritech argues that it is only required to pass an imputation test if there is no other provider of local exchange service in the relevant area. Ameritech argues that there are at least three providers of local exchange service offering service to IPPs in Ameritech's service territory; BRE Communications, L.L.C.; City Signal, Inc.; and TCG Detroit. Exhibit R-39. Ameritech rejects MCI's argument that the statute requires that the other provider be a facilities-based provider. Ameritech also argues that if required to pass an

imputation test it would do so by over \$25 million.

GTE agrees with the arguments of Ameritech. GTE argues that the MPTA had not even attempted to determine whether there were alternative providers of services used by IPPs prior to filing its complaint.

Brad Behounek testified on behalf of the MPTA. Mr. Behounek testified that there are approximately 78,000 payphones in Ameritech's operating territory. To the best of Mr. Behounek's knowledge, only five lines are provided by someone other than Ameritech. 9 Tr. 690-691. Mr. Behounek testified that there are approximately 7,700 payphones in GTE's operating territory and only six lines are provided by someone other than GTE. 9 Tr. 691.

Peter Gose testified on behalf of the MPTA. Mr. Gose admits that prior to the filing of the complaint he undertook no investigation into the availability of alternative providers in Ameritech's and GTE operating area.

Mr. Sands testifying on behalf of MCI contended that the service providers must be facilities-based. Mr. Sands admitted on cross-examination that the plain reading of the statute does not support his position. 10 Tr. 1060-1061.

Mr. Mauk testified that it is GTE's understanding that service to payphone providers is available from other providers who have obtained licenses to provide service in GTE's service area.

The ALJ believes the issue as presented is whether any provider offers alternative

service or whether the provider or providers offer a competitive alternative service. The ALJ finds the later. The ALJ is persuaded that §362 requires Ameritech and GTE to pass an imputation test under the facts presented in this case. First, the ALJ finds that §362 must be taken in its entirety. Taken in its entirety, §362(1)(b) cannot stand the interpretation posited by Ameritech and GTE. The ALJ finds that §362 requires that the provider offer an alternative so that competition would provide a level of safeguard against anti-competitive rates and services. One of the purposes of the MTA is to encourage competitive telecommunication services. §101(2)(b) of the MTA.

The ALJ rejects MCI's argument that the alternative provider must be facilities-based. There is no language in the MTA to support such a claim. The ALJ finds that the record shows Ameritech and GTE are competitively unchallenged in their respective areas. Neither faces a situation where alternative providers offer payphone network services which pose even nominal competition.

There has been considerable argument regarding whether Ameritech or GTE would pass an imputation test based on the evidence from this record. The ALJ finds that there is insufficient facts in this record to show whether Ameritech or GTE would pass an imputation test. The ALJ agrees with the MPTA when it concludes that Ameritech and GTE failed by not identifying all payphone-related expenses or removing USOA expenses from non-competitive ratebase. Ameritech did not perform a subsidy analysis. Ameritech relied on a review of the MPTA's PSCM for its assertion that it



would pass an imputation test. The PSCM is based on ARMIS information and payphone tariff rates including Account 5010. While it is disputed exactly what Account 5010 includes beyond the four-digit level, reliance on the PSCM to show that Ameritech would pass an imputation test is insufficient to comply with §362. GTE's subsidy analysis Exhibit R-43 fails to impute the tariff rate for coin line access service and EUCL. Again, GTE's subsidy analysis is insufficient to determine whether it would pass an imputation test.

The ALJ also agrees with the MPTA's position that the MTA is void ab initio if Ameritech and GTE are excluded from passing an imputation test. At the same time, the ALJ rejects Ameritech's and GTE's position that providers are available but IPPs have chosen not to use those available providers. The ALJ reasons that if providers were available then the MPTA would seize the alternatives based on the tariff rate with the overhead loadings identified earlier in this PFD. The fact that less than 1% of the payphone access lines are served by alternative providers given the overhead loadings and other costs embedded in the tariff rate, it is reasonable to assume that there are not competitive alternatives. Therefore, the ALJ finds that Ameritech and GTE are subject to the provisions of §362 of the MTA and recommend that the Commission order them to conduct an imputation test.

#### Effective Date

The MPTA argues that the effective date of the rates under the New Services Test

is April 15, 1997. The MPTA argues that to the extent that a tariffed rate is reduced then Ameritech and GTE are required to reimburse or provide credit to its customers for payphone services from April 15, 1997 to implementation. FCC Clarification Order, supra ¶1-2. The MPTA also argues that §601 of the MTA provides for the refund of any collected excessive rates.

Ameritech argues that the MPTA misconstrue the FCC Clarification Order, supra. Ameritech argues that the FCC Order only applies where a LEC took advantage of the 45-day waiver from the Clarification Order to file its rates with the FCC so that ratepayers would suffer no adverse consequences from the waiver and 45-day delay. Ameritech argues that since it did not file any revisions during the waiver period the refund is not applicable.

Ameritech argues that refunds run directly counter to well settled law in Michigan against retroactive ratemaking. Detroit Edison v Public Service Commission, 82 Mich App 59 (1978). Ameritech argues that the Commission is without authority to order retroactive rates. Valentine v Michigan Bell Tel Co, 388 Mich 19 (1972). Ameritech argues that the doctrine is well grounded in the rationale of providing stability in the ratemaking process. Citizens Util Co. v Illinois Commerce Comm'n, 124 ILL 2d 195 (1988). Ameritech argues that the retroactive rate doctrine must have consistent application otherwise there would be no reliability on lawful rates and there would be the constant jeopardy of enormous sums of refunds.

The ALJ rejects Ameritech's argument that this is analogous to retroactive ratemaking. The FCC Order sets the date definitive of April 15, 1997 for compliance with the New Services Test. Obviously without the sanction of applying the rate from the effective date there would be no incentive to file particularly where it results in lower rates. In addition, the FCC Order provides for a refund or credit to the date of April 15, 1997. The waiver language relied upon by Ameritech permits LEC to continue to receive payphone compensation provided all other requirements are met. The language only makes it clear that in those cases, as well, the LEC must still refund or provide credit from April 15, 1997.

The ALJ finds that the rates under the New Services Test were effective on April 15, 1997. The Commission in this case will determine what the rates will be under the New Service Test. The two issues are separate and distinct. Ameritech and GTE were in the position of simply taking the Commission Orders in MPSC Case No. U-11280, *supra*, and MPSC Case No. U-11281, *supra*, and providing cost studies consistent with those findings and be in compliance. The fact that Ameritech and GTE disputed those Commission orders and continues to dispute these orders does not change the effective date for rates consistent with the New Services Test.

#### Level of Network Access Services Provided IPPs

The MPTA argues that the quality of the network access services made available

to IPPs is discriminatory contrary to the MTA and the FTA. The MPTA argues that the deficiencies with the quality of service include both the IPP line and IPP coin line. The MPTA argues that deficiencies which make the access services network uncompetitive and discriminatory when compared with the services Ameritech and GTE offer their own payphone divisions include answer supervision; coin line service that prohibits price competition among payphone providers and all 0+ and 1+ intraLATA services are presubscribed to Ameritech's and GTE's own service, as well as operator service.

The MPTA argues that the existing coin line service provides Ameritech's and GTE's payphone operations competitive advantages. The MPTA argues that the coin lines are tailored exclusively to the payphone operations of Ameritech and GTE effectively precluding IPPs from the use of coin lines as a part of their business.

The MPTA argues that Ameritech and GTE have acknowledged that there are viable solutions to the discriminatory practice but have not implemented the solutions because their payphone operations have not requested them. The MPTA argues that two fundamental defects with existing coin line service is capability to provide multiple table rates and presubscription. The MPTA argues that GTE has the technical capability to provide both. The MPTA argues that GTE does not provide these services at the present time because GTE's own payphone division has not yet identified how it could use these services. The MPTA requests that GTE immediately implement changes to its coin line service to allow IPPs to presubscribe their 0+ intraLATA services to the carrier

of their choice and choose rates that are different than the rates set by GTE.

The MPTA requests that Profitmaster service be made available once again from all Ameritech's central offices. The MPTA argues that management of payphone service through the central office reduces capital costs, uncollectibles, has higher reliability, greater fraud protection and greater efficiency in route management. Exhibit C-3. Yet, Ameritech only offered Profitmaster from a single office and then only on a test basis. The MPTA argues that the reason Ameritech withdrew Profitmaster was because its own payphone division did not subscribe to the service.

Ameritech argues that the FCC has required it to comply with the CEI requirements. Ameritech argues that these requirements make service on the same basis available to IPPs and its own payphone division. Ameritech argues that because the FCC has found Ameritech in compliance with the CEI requirements, it therefore does not discriminate against IPPs.

Ameritech argues that it offered Profitmaster services but the IPPs would not purchase the services. Ameritech argues that it would be immensely costly for Ameritech to make Profitmaster available without sufficient demand from the IPPs to justify the offer.

Ameritech argues that the IPPs have relied on an embedded base of smart sets. Ameritech argues that it is no fault of it that the IPPs now claim the smart sets are more expensive to maintain, not as reliable and more cumbersome than IPP coin line.

Ameritech argues that the IPPs complaints should be directed at the switch vendors. Ameritech argues that it has attempted to assist IPPs through the offer of a service called Answer Supervision-Landside, an unbundled vertical feature of the IPP line that provides the same answer detection capabilities for IPP line as the IPP coin line. Ameritech argues that the MPTA is wrong when it claims that it has no choice on 1+ and 0+ intraLATA toll traffic. Ameritech argues that there are three other carriers, AT&T, AMNEX and One-Call with capabilities to provide 1+ and 0+ routing for IPPs.

GTE argues that it provides service to its PubCom payphone division at the same rates charged to IPPs. GTE also argues that the same services are offered to both its payphone division and IPPs. GTE argues that it cannot make available features of coin line service to IPP customers because these services are no longer available. GTE argues that based on its own studies there is insufficient demand to economically justify the investment required to provide the IPPs the services requested.

GTE argues that alternatives for 0+ and 1+ intraLATA Toll Providers are available for selection by the IPPs. GTE argues that the MPTA never bothered to review tariff offerings or investigate the availability of 0+ and 1+ intraLATA selection.

GTE argues that its operator services are offered on favorable terms to IPPs. GTE argues that IPPs also have choice selection as to operator services.

Mr. Pace testified that Ameritech does not offer Answer Supervision-Landside from all central offices. Mr. Pace testified that Ameritech claims that it is too expensive

to offer Answer Supervision-Landside from its Lucent switches because of high licensing cost. Mr. Pace testified that Ameritech chose not to offer the service rather than price the service at its cost. He claims the service is not 100% accurate and will stop working altogether in certain exchanges.

Mr. Pace testified that Ameritech and GTE coin line service is tailored exclusively to provide end-user services consistent with the requirements of their payphone division. The IPPs that subscribe to coin line service have to use the rates tables that the payphone division has selected. Mr. Pace testified that the only way an IPP can compete on price is to purchase more expensive equipment and connect to an access line which does not have answer supervision or call rating service.

Mr. Pace testified that all coin lines, now offered as a result of the FCC Order CC Docket No. 96-128, supra, require the subscriber to use Ameritech's and GTE's local exchange operators and 1+ intraLATA toll services. He states that the IPP has no choice in selecting the 1+ or 0+ intraLATA provider but must rely on the choice of Ameritech and GTE.

Mr. Pace testified that GTE, through its Bellcore Manual, has the technical capabilities to provide coin line functions which the MPTA requests to make the GTE service offering more competitive. Mr. Pace testified that Answer Supervision should be made available from the central offices of Ameritech and GTE.

Ms. Linda K. Karaba testified on behalf of Ameritech. Ms. Karaba testified that

Ameritech does not design, develop or manufacture smart sets. Ms. Karaba testified that switch vendors Lucent, Nortel and Siemens control the variety and quality features of the coin lines and it is not simply a function of Ameritech's offerings. She states that as a result of the predominant use of smart sets by the IPPs the demand for IPP coin line is extremely low. 11 Tr. 1169-1170. Ms. Karaba testified that only 6.5% of the approximately 7200 IPP lines signed-up for Answer Supervision-Landside.

Ms. Karaba testified that Ameritech has urged the switch vendors on numerous occasions to make available a cost-effective, affordable multiple-rate-table-function. Ms. Karaba testified that if the functionality were available on a cost-effective basis, the APPS would buy it as well. 11 Tr. 1170. Ms. Karaba admits that the rates the IPPs charge are in some cases set by Ameritech. 11 Tr. 1196-1198. Ms. Karaba testified that there are three carriers with capability to provide 1÷ and 0÷ routing. 11 Tr. 1173-1174.

Ms. Karaba testified that Profitmaster was developed by a third party vendor to provide standard coin features, such as flexible routing, flexible rating, local coin timing, rating-database management and software downloads. 11 Tr. 1174. She states that Profitmaster works with a dumb set not the smart sets. Ms. Karaba testified that Profitmaster was terminated because of low demand.

GTE presented the testimony of Woodrow C. Whitford. Mr. Whitford testified that there is no demand for features not already a part of the IPP line because those



features would duplicate the smart set functionality. Mr. Whitford testified that the Bellcore Manual relied upon by the MPTA was outdated and those services are no longer available. Mr. Whitford testified that under GTE's current tariff, IPPS could subscribe to alternative providers of 0+ and 1+intraLATA toll.

The ALJ finds that the fact that Ameritech filed its CEI requirements does not show compliance with §318 of the MTA. Ameritech did not show that the FCC issued any orders or findings of non-discriminatory payphone service offerings.

The ALJ is convinced that Ameritech and GTE offer the MPTA payphone services that are not competitive to those offered to Ameritech's APPS division and GTE's PubCom division. Ameritech and GTE overlook the significant fact that their payphone divisions have been the standard by which they have designed their payphone systems for many years. The rates that are set on the IPP coin lines are not set by the IPPs but by APPS and PubCom. The IPPs either have to rely on smart sets at considerable more cost or on coin line which does not provide the features it requests.

The ALJ finds that Ameritech discriminates against the IPPs by not offering Profitmaster and GTE by offering a comparable service through all of the central offices in their respective area. The ALJ finds that Ameritech and GTE have denied the IPPs central office implement features which are more reliable and more efficient than the use of smart sets. Ameritech and GTE cannot use the fact that the MPTA uses smart sets to deny the requested services. The use of smart sets by IPPs was in direct response to

services offered to them at the time. Also, Ameritech and GTE can not use the demand or rather lack-of demand experienced with the limited offers of Profitmaster and comparable service to deny the IPPs the payphone services requested. The ALJ recognizes that there is considerable more costs involved with offering Profitmaster and comparable services in all of Ameritech's and GTE's area. However, the ALJ finds that this is the only way that Ameritech and GTE payphone service offerings to IPPs is non-discriminatory when compared to the payphone services offered to their own payphone divisions.

The ALJ is persuaded that over time the MPTA will demand Profitmaster and comparable services in sufficient demand to cover the costs. The ALJ finds that the resultant ability of IPPs to purchase dumb sets at considerable capital cost savings and the improved efficiencies of central office management makes it the reasonable choice for future investment and thus increased demand.

The ALJ also recognizes that this will involve an evolution of sorts of the basic structure of the payphone industry and will therefore take some time. However, the MPTA must have competitive non-discriminatory offerings throughout Ameritech's and GTE's service area consistent with § 318 of the MTA. The competitive nondiscriminatory offerings must be made available as a permanent choice for which the MPTA can rely for planning purposes. The ALJ finds that this recommendation, although more costly initially, will prove less costly in the long run as the capital costs

of the IPPs are reduced, the efficiencies of central office management are realized and the demand for the services increase. The payphone industry would then move toward a competitive industry as provided by the MTA.

The ALJ is not convinced that the offer of Profitmaster and comparable service is the complete solution. Profitmaster only works with dumb sets. Most of the MPTA units are smart sets. Therefore, Ameritech and GTE must also offer Answer Supervision so that IPPs use of smart sets is also competitive and non-discriminatory.

The ALJ finds that the MPTA has not shown that 1+ and 0+ intraLATA and operator services are only available from Ameritech and GTE. To the contrary, the ALJ finds that Ameritech and GTE have shown that the MPTA has choices with regard to 1+ and 0+ intraLATA and operator services.

#### IV.

#### CONCLUSION

The ALJ finds that Ameritech and GTE have not shown compliance with the New Services Test. The ALJ recommends that the Commission order Ameritech and GTE to provide cost studies in compliance with the New Services Test. The ALJ recommends adoption of the MPTA's proposed and interim tariff. The ALJ finds that Ameritech and GTE are subject to the requirements of the Imputation Test. The ALJ recommends that the Commission order Ameritech and GTE to provide a cost analysis consistent with the

Imputation Test. The ALJ finds that Ameritech and GTE discriminate in the offer of payphone service. The ALJ recommends that the Commission order Ameritech and GTE to modify their payphone service in a manner consistent with the findings of this PFD.

MICHIGAN PUBLIC SERVICE COMMISSION

February 12, 1999  
Lansing, Michigan  
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Daniel E. Nickerson, Jr.  
Administrative Law Judge

ISSUED AND SERVED: February 16, 1999

**EXHIBIT C**

Ameritech Michigan  
Case No. U-11756  
Of: MCI  
No. First  
Date: October 14, 1995

MCAM10001 On page 14-15 of his direct testimony, Mr. Suthers states that "[W]hen looking at rate levels for a service, the MPSC should look not only at the costs that can be attributed to that service, but also at the amount of support that might be required to support other services. ... Such support has historically been required to meet public policy goals relating to universal service. These historical support flows have been from toll (access) to local, urban to rural, and business to residence." Provide all analyses and documents that relate to the amount of support from September 1996 to the present flowing to Ameritech's retail payphone operations as a result of the public policy goals relating to universal service.

Response: The actual amount of support currently provided by or to retail payphone services has not been quantified.

Respondent: Mike Suthers .

ILLINOIS PUBLIC SERVICE COMMISSION  
FILE U-11756  
EXHIBIT NO. 1-19  
DATE 11-16-98 : LAF REPORTED